

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 608

FISCAL
NOTE

BY SENATORS HAMILTON, KARNES, MARTIN, AND

ROMANO

[Introduced February 10, 2022; referred
to the Committee on Government Organization ; and then
to the Committee on Finance]

1 A BILL to amend and reenact §11-4-2 and §11-4-3 of the Code of West Virginia, 1931, as
2 amended, all relating to assessment of real property; and providing that an immediate
3 family member or former spouse of the owner of real property who occupies the real
4 property of the owner exclusively for residential purposes shall be included in class (1) for
5 assessment and taxation purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-2. Form of landbooks.

1 The Tax Commissioner shall prescribe a form of landbook and the information and
2 itemization to be entered therein, which shall include separate entries of: (1) All real property or
3 whatever portion thereof in square feet that is owned, used, and occupied by the owner
4 exclusively for residential purposes, including mobile homes, permanently affixed to the land and
5 owned by the owner of the land: Provided, That notwithstanding any provision of this section or
6 code to the contrary, real property occupied exclusively for residential purposes by an immediate
7 family member or former spouse of the owner shall be included in this class; (2) all real property
8 or whatever portion thereof in square feet that is owned by an organization that is exempt from
9 federal income taxes under 26 U.S.C. §501(c)(3) or 501 (c)(4) and used primarily and immediately
10 for a purpose that is exempt from tax under §11-3-9 of this code; (3) all real property or whatever
11 portion thereof in square feet that is owned by an organization that is exempt from federal income
12 taxes under 26 U.S.C. §501(c)(3) or 501(c)(4) and that is not used primarily and immediately for
13 a purpose that is exempt from tax under §11-3-9 of this code; (4) all farms including land used for
14 agriculture, horticulture, and grazing occupied by the owner or bona fide tenant; (5) and all other
15 real property. For each entry there shall be shown: (A) The value of land, the value of buildings,
16 and the aggregate value; (B) the character and estate of the owners, the number of acres or lots,
17 and the local description of the tracts or lots; and (C) the amount of taxes assessed against each
18 tract or lot for all purposes.

§11-4-3. Definitions.

1 (a) For the purpose of giving effect to the Tax Limitations Amendment, this chapter shall
2 be interpreted in accordance with the following definitions, unless the context clearly requires a
3 different meaning:

4 ~~(1)~~“Owner” means the person, as defined in §2-2-10 of this code, who is possessed of
5 the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or
6 deed of trust securing a debt or liability is considered the owner until the mortgagee or trustee
7 takes possession, after which the mortgagee or trustee shall be considered the owner. A person
8 who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession
9 before transfer of legal title is also considered the owner. Owner shall also include the corporation
10 or other organization possessed of the freehold of a qualified continuing care retirement
11 community.

12 ~~(2)~~“Used and occupied by the owner thereof exclusively for residential purpose” means
13 actual habitation by the owner or the owner's spouse, or a qualified resident of all or a portion of
14 a parcel of real property as a place of abode to the exclusion of any commercial use: *Provided,*
15 That if the parcel of real property was unoccupied at the time of assessment and either: (A) Was
16 used and occupied by the owner thereof exclusively for residential purposes on July 1, of the
17 previous year assessment date; (B) was unimproved on July 1, of the previous year but a building
18 improvement for residential purposes was subsequently constructed thereon between that date
19 and the time of assessment; or (C) is retained by the property owner for noncommercial purposes
20 and was most recently used and occupied by the owner or the owner's spouse as a residence
21 and the owner, as a result of illness, accident or infirmity, is residing with a family member or is a
22 resident in a nursing home, personal care home, rehabilitation center or similar facility, then the
23 property shall be considered “used and occupied by the owner thereof exclusively for residential
24 purpose” and, notwithstanding any provision of this section or code to the contrary, includes real
25 property, occupied exclusively for residential purposes by an immediate family member or former

26 spouse of the owner: *Provided, however,* That nothing herein contained shall permit an
27 unoccupied or unimproved property to be considered “used and occupied by the owner thereof
28 exclusively for residential purposes” for more than one year unless the owner, as a result of
29 illness, accident or infirmity, is residing with a family member or is a resident of a nursing home,
30 personal care home, rehabilitation center or similar facility. Except in the case of a qualified
31 continuing care retirement community, if a license is required for an activity on the premises or if
32 an activity is conducted thereon which involves the use of equipment of a character not commonly
33 employed solely for domestic as distinguished from commercial purposes, the use may not be
34 considered to be exclusively residential. In the case of a qualified continuing care retirement
35 community, uses attendant to the functioning of the qualified continuing care retirement
36 community, including, without limitation, cafeteria, laundry, personal and health care services,
37 shall not be considered a commercial use even if such activity or equipment requires a separate
38 license or payment.

39 ~~(3)~~ “Family member” means a person who is related by common ancestry, adoption or
40 marriage including, but not limited to, persons related by lineal and collateral consanguinity and
41 for purposes of assessing real property under §11-4-2 of this code in class (1) includes a former
42 spouse of the owner who occupies the real property exclusively for residential purposes.

43 ~~(4)~~ “Farm” means a tract or contiguous tracts of land used for agriculture, horticulture or
44 grazing and includes all real property designated as “wetlands” by the United States Army Corps
45 of Engineers or the United States Fish and Wildlife Service.

46 ~~(5)~~ “Occupied and cultivated” means subjected as a unit to farm purposes, whether used
47 for habitation or not, and although parts may be lying fallow, in timber or in wastelands.

48 ~~(6)~~ “Qualified continuing care retirement community” means a continuing care retirement
49 community: (A) Owned by a corporation or other organization exempt from federal income taxes
50 under the Internal Revenue Code; (B) used in a manner consistent with the purpose of providing
51 housing and health care for residents; and (C) which receives no Medicaid funding under the

52 provisions of article four-b, chapter nine of this code. For purposes of this section, a continuing
53 care retirement community is a licensed facility under the provisions of articles five-c and five-d,
54 chapter 16 of this code at which independent living, assisted living and nursing care, if necessary,
55 are provided to qualified residents.

56 “Qualified resident” means a person who contracts with a qualified continuing care
57 retirement community to reside therein, in exchange for the payment of an entrance fee or deposit,
58 or payment of periodic charges, or both.

59 (b) *Effective date of amendments.* -- Amendments to this section enacted during the 2006
60 regular session of the Legislature shall have retroactive effect to and including July 1, 2005, and
61 shall apply in determining tax for tax years beginning January 1, 2006, and thereafter.

62 *Effective date of amendments.* -- Amendments to this section enacted during the 2007
63 regular session of the Legislature shall take effect on July 1, 2007.

NOTE: The purpose of this bill is to provide that an immediate family member or former spouse of the owner of real property who occupies the real property of the owner exclusively for residential purposes shall be included in class (1) for assessment and taxation purposes.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.